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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	))))	CC Docket No. 96-128

COMMENTS OF LCI INTERNATIONAL TELECOM CORP.

LCI International Telecom Corp. ("LCI"), by its attorneys, submits these initial comments on issues raised by the Court of Appeals for the District of Columbia Circuit's ("DC Circuit") decision in *Illinois Pub. Telecom. Ass'n v. FCC* ("*IPTA*").[1]

I. The *IPTA* Decision

In *IPTA*, the DC Circuit held that the Federal Communications Commission ("FCC" or "Commission") acted arbitrarily and capriciously in establishing both a per-call and an interim per-phone payphone compensation plan pursuant to section 276 of the Communications Act, as amended. Specifically, the Court held that the FCC acted arbitrarily in basing the default payphone compensation rate on deregulated local coin call rates. In support of its holding, the Court noted that the record was "replete with evidence" that the costs of local coin calls were not similar to the costs of originating coinless calls. The Court explained that because a PSP must only *originate* coinless calls, the costs of local coin calls (requiring both origination *and* termination) most certainly are higher than the costs of coinless calls. This conclusion was also supported by the fact that local coin calls

[1] *Illinois Pub. Telecom. Ass'n v. FCC*, No 96-1394 et al (D.C. Cir. July 1, 1997) ("*IPTA*"); *see Public Notice*, DA 97-1673 (rel. Aug. 5, 1997).

must bear the cost of coin equipment and coin collection (costs not incurred by coinless calls). Thus, the Court concluded that the default rate "cannot stand."[2]

The Court also held that the Commission's interim per-phone payphone compensation plan is arbitrary and capricious, for two reasons. First, the Court held that the Commission acted arbitrarily in calculating per-phone compensation by imputing the $0.35 local coin rate as the compensation amount for these calls. The Court found the Commission's action arbitrary for the same reasons it had concluded that it was arbitrary to use the deregulated local coin rate as the default compensation amount. Second, the Court found that the Commission's decision to limit the universe of carriers paying compensation to the largest IXCs (even though LECs and smaller IXCs also receive compensable calls) could not be justified by the Commission's "administrative convenience" rationale.[3]

II. The Commission's Public Notice

LCI believes that the Common Carrier Bureau ("Bureau"), in its August 5, 1997 *Public Notice*, misinterpreted the effect of the DC Circuit's decision on the Commission's payphone compensation rules. In its *Public Notice*, the Bureau improperly concludes that the Court "actually vacated only one narrow aspect" of its payphone rules and declares that carriers, including LCI, must continue to pay compensation pursuant to the same interim plan that the Court found to be arbitrary and capricious.[4] Moreover, in the

[2] *IPTA* at 15-17.

[3] *Id.* at 17.

[4] *Public Notice* at 1.

Public Notice, the Bureau makes no assurance that the harmful effects of continued payments under the Commission's now vacated interim compensation scheme would be remedied.[5]

LCI submits that the Court's decision makes it clear that (1) the FCC's default rate is arbitrarily high, (2) the FCC's interim per-phone plan is arbitrary and capricious in both the amount of compensation ordered and the method by which it was allocated among carriers receiving compensable calls, and (3) the FCC's interim compensation plan has been vacated. Given these facts, both the force and logic of the Court's opinion support LCI's position that the FCC's compensation rules are vacated pending Commission action on remand.

Thus, LCI submits that no valid interim payphone compensation obligation is in place at this time and that it is not obligated to pay any interim compensation amount to PSPs until a new plan properly is adopted.[6] In order to eliminate the Bureau's apparent confusion on this point, LCI and eight other carriers have petitioned the DC Circuit for an order clarifying that its opinion vacates the FCC's compensation rules pending remand.[7]

III. The Commission Should Set A New Default Compensation Amount Based On A Reasonably Efficient PSP's Cost Of Originating Access Code And Subscriber 800 Calls

[5] *Id.* at 1-2.

[6] LCI does not contest the Commission's authority to adopt a reasonable interim compensation plan that is consistent with the court's *IPTA* decision. *See Mid-Tex Electric Coop. v. FERC*, 822 F.2d 1123 (D.C. Cir. 1987). Any compensation plan should apply until the Commission issues a final order on remand.

[7] Petition for Clarification or, Alternatively, for Partial Rehearing, D.C. Cir. No. 96-1394 (filed Aug. 15, 1997).

The DC Circuit remanded the Commission's interim default compensation level based on several parties' submissions containing "solid data" demonstrating that the costs of local coin calls were higher than the costs of originating coinless access code and subscriber 800 calls.[8] To respond properly to the Court's remand, the Commission must now address these data by adopting a default compensation amount that reflects the costs of access code and subscriber 800 calls only and not the additional costs associated with other calls originated from payphones.

Significantly, neither LCI nor the Court challenges the Commission's conclusion in its *Payphone Orders* that "fair" compensation means compensation that is tied to a PSP's costs in originating the compensable calls.[9] Thus, LCI submits that the Commission erred not in choosing cost-based compensation, but in adopting a "market-based" surrogate that did not accurately reflect the costs of these calls.[10] Accordingly, the Commission now must determine the costs associated with *access code and subscriber 800 calls* (as opposed to other calls from payphones) and must set appropriate compensation levels based on these findings.

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[8] *IPTA at 14.*

[9] *See, e.g., Report and Order*, ¶¶ 67, 70 (concluding that "PSPs should be compensated for their costs in originating . . . calls using their payphones" and that "deregulated local coin rates are the best available surrogates for payphone costs").

[10] The Commission's *Payphone Orders* did not adopt "market-based" compensation at the expense of cost-based compensation, as the Bureau suggests. *Public Notice* at 2 (asking how cost differences affect a "market-based compensation amount"). Rather, the Commission adopted costs as the appropriate standard, but used a "market" rate (the local coin rate) as a surrogate for determining those costs. The DC Circuit's finding that the surrogate did not reflect cost differences in the types of calls supports LCI's view that section 276 requires cost-based compensation.

A. The Commission Should Adopt A Marginal Cost Standard

LCI believes that using the marginal cost standard for access code and subscriber 800 calls is fair to PSPs, consumers and carriers. There is no readily available surrogate that appropriately reflects the costs of compensable payphone calls. Thus, the Commission specifically must examine and should set compensation equal to the additional, or marginal, costs created by access code and subscriber 800 calls.[11] LCI believes that this approach best fulfills the Act's section 276 mandate that PSPs are to be "fairly compensated" for each and every call from their payphones. To fulfill this mandate, the Commission should ensure that PSPs are able to recover their costs and that every call bears the costs it creates. However, this does not require that each and every call contribute equally toward a PSP's overall return. Indeed, the *IPTA* decision makes it clear that compensation for a particular call must bear a relationship to *its* costs and that not all calls placed from payphones have equal costs.

LCI's belief that using the marginal cost standard for access code and subscriber 800 calls is fair to PSPs, consumers and carriers is based on the fact that these calls are merely incidental to payphone installation and are not its primary purpose. In fact, American Public Communications Council ("APCC") recently published data that indicate that, on average, an independent payphone originates over 713 calls per month with the

[11] Although LCI does not support the Commission's view that every call should bear a portion of the fixed costs of providing a payphone, if the Commission adopts such a contribution plan, it should set compensation based on the forward-looking direct costs of originating access code and subscriber 800 calls.

overwhelming majority (72 percent) of these calls being local and 1+ coin calls.[12] Thus, these calls drive PSPs' decisions as to whether and where to install a payphone. Moreover, the Commission has granted PSPs complete flexibility in determining the price it will charge for these calls.[13] Although access code and subscriber 800 call volumes are not *de minimis*, these calls do not determine whether and where PSPs install payphones. Accordingly, LCI submits that the costs associated with installing and maintaining a payphone should not factor into any determination of proper compensation for access code and subscriber 800 calls. To the extent that PSPs require minimum levels of income to install particular payphones, that income soon will be guaranteed by the deregulated rate PSPs will be able to charge for the coin calls that represent nearly three-quarters of payphone traffic volume.

LCI recognizes that PSPs are compelled by statute to permit access code calling (as a result of past PSP abuses) and their receipt of some compensation for this public policy choice is appropriate. However, PSPs' costs of permitting such access are limited to the additional or incremental costs that are created when a caller uses an access code to place a call. Relevant cost factors include the additional maintenance and wear and tear occasioned by the increased usage and the per-minute usage charges (if any) imposed by a LEC for originating access code or subscriber 800 calls.

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[12] "The Numbers . . .", *Perspectives*, Aug. 1997 at 35 (attached as Exhibit A). The applicability of this estimate to local exchange carrier payphones has not been established.

[13] APCC reports that, at a local coin rate of $0.35 per call, PSPs will derive at least $178.85 per month from the 511 local and 1+ coin calls. *See id.* Indeed, since some of the 511 calls are 1+ (sent-paid) coin calls, which average significantly more than $0.35 per call, PSPs' revenues from coin calls will be even higher.

B. Direct Costs Should Be Used If the Commission Finds It Necessary To Include A Portion of Equipment Costs

Alternatively, if the Commission determines that it is necessary to include a portion of the equipment costs incurred to install a payphone, LCI recommends that the Commission base compensation on the forward-looking, direct costs incurred by an access code or subscriber 800 call. Direct costs would include not only the marginal costs created by an access code or subscriber 800 call, but also a share of the equipment and payphone line expense attributable to usage of the payphone. Accordingly, direct costs necessarily would include a proportional share of: (1) the cost of acquiring and installing a coinless payphone, amortized over an appropriate period; (2) the cost of maintaining that equipment; and (3) the cost of a basic phone line (plus usage, if separate usage charges are incurred for access code and subscriber 800 calls). If the Commission deems necessary, these costs should be apportioned according to overall usage of the payphone.

Significantly, LCI also submits that the direct cost of access code and subscriber 800 calls should *exclude* those costs that are not created by the origination of coinless calls. Principally, this includes the costs of coin equipment and coin collection, both of which are unique to coin calls. A payphone equipped with coin capability is more expensive than a coinless phone. Coin phones require greater maintenance, due to broken or jammed coin mechanisms, and require more frequent site visits in order to collect the monies deposited in the phones. Since these costs are not incurred as a result of the origination of access code and subscriber 800 calls, they should not be recovered through a compensation mechanism covering these calls.

Additionally, LCI believes that direct costs also should exclude costs of *terminating* local calls, such as long distance charges assessed on 1+ calls and usage charges for *local* coin calls. Further, commissions paid to location owners should be excluded because these commissions are paid on 0+ and 1+ revenues generated by the phone, not on other call types, such as access code or subscriber 800 calls. Finally, administrative or overhead charges are not properly attributable to coinless calls, and should not be included in the compensation amount.[14]

C. The Commission Should Set A Uniform Compensation Rate

Regardless of which of these methods are used to calculate the compensation amount, LCI believes that the Commission should set a single, national compensation rate for access code and subscriber 800 calls, rather than allow the rate to vary by PSP, by phone, or even over time. All parties involved need a system which is uniform, predictable and easy to administer. By prescribing a single compensation rate, the Commission will provide necessary business certainty and will reduce the chances that calls will be blocked due to a carrier's lack of information concerning the rate to be charged.

LCI also submits that the Commission should avoid any plan that, like the plan originally adopted, creates incentives for PSPs to engage in strategic pricing of payphone calls in order to maximize hidden compensation surcharges. For example, one by-product of

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[14] The Bureau also seeks comments on whether the local coin rate should be used as a starting point, with an offset for expenses unique to those calls. *Public Notice* at 2. LCI does not endorse this approach. However, if such an approach was adopted, LCI submits that an amount equal to a carrier's costs in tracking and billing compensation must be subtracted from the local coin rate.

basing the compensation rate on the local coin rate was to alter the factors a PSP would consider in setting local coin rates, thereby creating the possibility that a PSP would offset any decrease in local calling with additional hidden surcharge revenue generated by dial around compensation. By prescribing a specific rate, the Commission can reduce the potential for this problem.

IV. Any Per-Phone Compensation Plan Must Require All Carriers Receiving Compensable Calls To Contribute In A Rationally Apportioned Manner

Despite the Act's section 276 mandate that PSPs be compensated for each and every call, the Commission's interim compensation plan excuses two categories of carriers that benefit from these compensable calls, LECs and small IXCs, from the payment obligation. LCI believes that neither exclusion is justified or permissible under section 276.

LCI submits that both LECs and small IXCs receive the types of calls for which section 276 mandates compensation.[15] Accordingly, LCI submits that these carriers cannot rationally be excluded from any compensation plan the Commission chooses to adopt. The Commission already has recognized that "exemptions from the obligation to pay compensation, *even on an interim basis*, would be contrary to the congressional mandate that

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[15] In fact, in many states, LECs continue to have a monopoly on 0+ intraLATA calls from payphones, and in many instances receive such calls without paying any commissions to the premise owner. *Report and Order*, ¶ 53. A number of LECs also offer interLATA toll services which rely upon 800 access numbers. Additionally, all BOCs currently offer or have announced plans to offer out-of-region interLATA services. Similarly, most IXCs, whether large or small, offer one or more 800 services and calling card options with their 1+ services. In addition, every operator service provider, regardless of size, is required to have an 800 access number and many offer other methods of access code dialing as well.

we ensure fair compensation for 'each and every completed intrastate and interstate call.'"[16] Thus, LCI urges the Commission to include all carriers in any new compensation plan it prescribes.

CONCLUSION

The Commission must set a new default compensation rate to replace the rate which has been vacated by the DC Circuit. That rate should be based on the costs of originating access code and subscriber 800 calls, in the manner described herein. Moreover, any compensation mechanism adopted by the Commission must require all carriers receiving compensable calls to contribute in a rationally apportioned manner.

Respectfully submitted,

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[16] *Report and Order*, ¶ 87.

EXHIBIT A

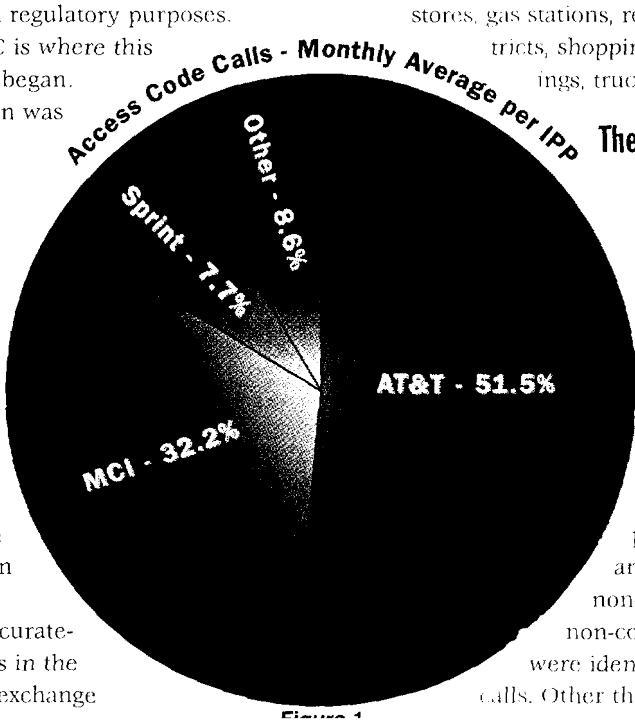
The Numbers are in...

APCC's SMDR Project provides telling statistics on payphone calls

by Gregory V. Haledjian

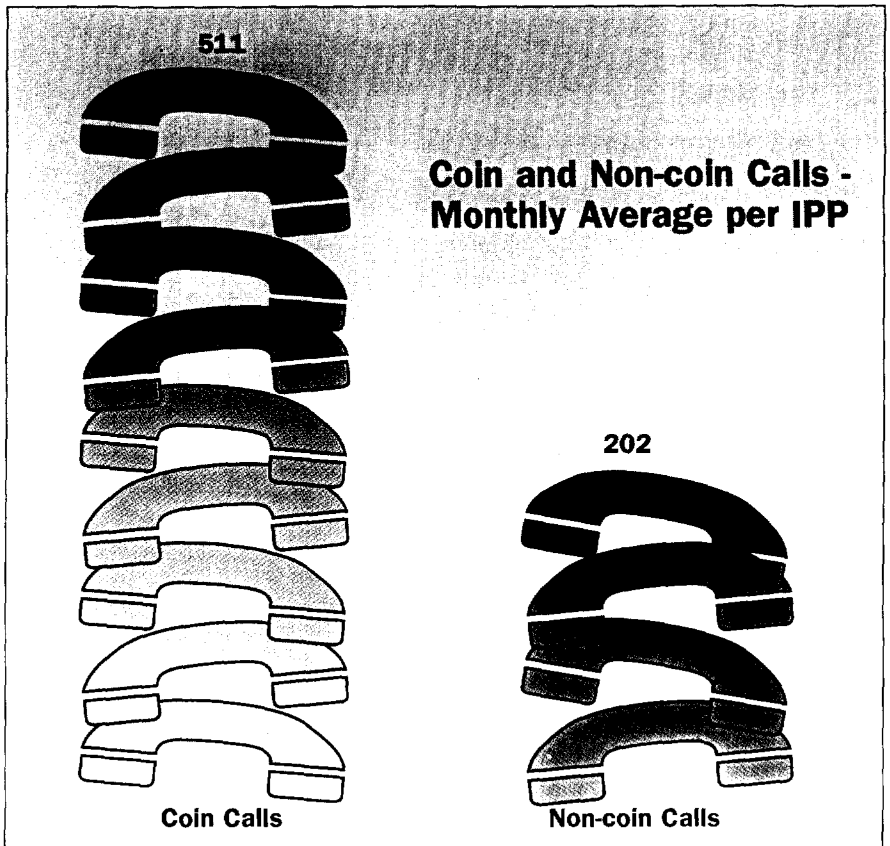
How many calls are made from an average payphone each month? How many of them are coin? How many are non-coin? How many are dial-around? Which interexchange carriers (IXCs) get the most calls from payphones? Independent public payphone (IPP) providers can answer these questions about their own phones, but industry-wide statistics haven't been available until just recently. Now, providers can compare their own information with industry-wide numbers, and the American Public Communications Council Inc. (APCC) can use the statistics for legal, legislative and regulatory purposes.

In fact, the APCC is where this numbers project all began. When the association was working before the Federal Communications Commission (FCC) to develop regulations for implementing the payphone provisions of the Telecom Act, it needed data to accurately demonstrate call traffic patterns from IPPs. The association developed a sample group that would accurately reflect all the IPPs in the United States (local exchange carrier [LEC] payphones are not included). Currently, 23 companies that operate more than 100,000 phones are participating in what is known as the SMDR Project (station message detail reports). These companies are submitting monthly call data from 4,400 payphones in 32 states. They're tracking and reporting information on completed call counts and duration. The APCC defined a completed call for this project by setting an acceptable duration for each type of non-coin call. The payphones are at a wide variety of locations, including hotels, motels, convenience stores, gas stations, restaurants, business districts, shopping malls, apartment buildings, truck stops and casinos.



The results

At the time this article was prepared, the APCC had been able to crunch 11 months' worth of data, from February to December 1996. In this time period, the data showed an average of 713 completed calls per payphone per month. Of these, 511 (72 percent) were coin calls, and 202 (28 percent) were non-coin calls. Of the 202 non-coin calls, 39 (19 percent) were identified as access code calls. Other than subscriber 800 calls,



the rest of the non-coin calls broke down as follows: 24 (12 percent) were 0+ calls, 10 (5 percent) were 0- calls, 5 (2 percent) could be positively identified as prepaid card calls, 2 (1 percent) were 00- calls, 12 (6 percent) were 411 calls, and 2 (1 percent) were 555 calls. The remainder of the non-coin calls, which totaled 108 (53 percent), appear to be subscriber 800 calls.

Of the 39 access code calls per month, AT&T received 20.1 calls (51.5 percent), MCI received 12.6 calls (32.2 percent), Sprint received 3 calls (7.7 percent), and the remaining carriers received a total of 3.3 calls (8.6 percent).

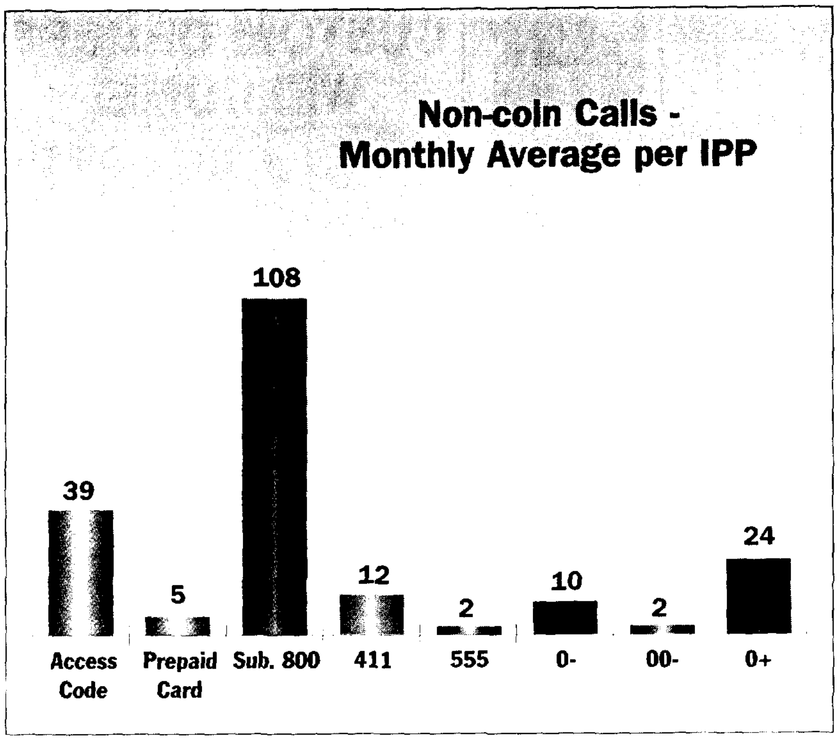
This of course brings us to dial-around compensation. The 1996 data showed an average of 152 dial-around calls per payphone per month: 108 (71 percent) were subscriber 800 calls, 39 (26 percent) were access code calls, and 5 (3 percent) were prepaid card calls. (To prevent any confusion, we

Dial-around Stats - Monthly Average per IPP*

Call Counts 1996	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Access Code Calls	31	40	38	44	39	46	49	35	39	38	32
Prepaid Card Calls	3	3	3	3	4	7	7	6	6	5	4
Subscriber 800 Calls	75	98	96	102	107	111	122	103	130	126	119
411	10	11	11	13	15	14	12	14	12	10	11
555	1	2	2	1	2	2	2	2	3	2	2
0-	11	10	10	11	12	13	11	9	8	7	7
00-	1	1	1	1	2	2	2	2	3	2	2
0+	29	31	26	27	25	25	28	20	19	18	16
Non-coin Calls Total	161	196	188	203	205	219	233	191	219	210	195
Coin Calls Total	423	505	468	535	536	556	544	526	524	494	509
Coin & Non-coin Total	584	701	656	738	742	775	777	716	744	704	703

Call Percentages 1996	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Access Code Calls	**20%**	**20%**	**20%**	**21%**	**19%**	**21%**	**21%**	**18%**	**18%**	**18%**	**17%**
Prepaid Card Calls	2%	2%	2%	2%	2%	3%	3%	3%	3%	3%	2%
Subscriber 800 Calls	**47%**	**50%**	**51%**	**50%**	**52%**	**51%**	**53%**	**54%**	**59%**	**60%**	**61%**
411	6%	6%	6%	6%	7%	6%	5%	7%	6%	5%	6%
555	**0%**	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**
0-	7%	5%	6%	6%	6%	6%	5%	5%	4%	4%	4%
00-	**1%**	**0%**	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**	**1%**
0+	18%	16%	14%	13%	12%	11%	12%	11%	9%	9%	8%
Non-coin Calls Total	**28%**	**28%**	**29%**	**27%**	**28%**	**28%**	**30%**	**27%**	**29%**	**30%**	**28%**
Coin Calls Total	72%	72%	71%	73%	72%	72%	70%	73%	71%	70%	72%

** Due to rounding, the totals in this table may not be exact.*



should note that the APCC had previously submitted dial-around data to the FCC that showed a total of 142 dial-around calls per month: 99 [70 percent] were subscriber 800 calls, 40 [28 percent] were access code calls, and 3 [2 percent] were prepaid card calls. These stats were based on three months' worth of data; the current results are from 11 months' worth of data.)

A few trends

The 1996 data also revealed what many of you already knew: coin-sent paid is the predominant type of call made from payphones, representing 72 percent of all calls. Concerning non-coin calls, subscriber 800 is the most prevalent call type. In fact, this category increased from 47 percent of all non-coin calls in February to 61 percent of all non-coin calls in December. Access code calls declined slightly throughout the year: 20 percent in February, a high of 21 percent in May, July and August, and a low of 17 percent in December.

Regarding other types of non-coin calls, directory assistance calls remained consistent during 1996. As for operator-assisted calls, 0- calls declined slightly during the year: from 7 percent in February to 4 percent in December. The 00- calls remained relatively flat (at 1 percent), while 0+ calls decreased dramatically, from 18 percent in February to 8 percent in December.

Which IXCs are getting these non-coin calls? The top seven carriers receive 97.4 percent of all access code calls. This group consists of AT&T, MCI, Sprint, LDDS WorldCom, Frontier, LCI and Excel. Figure 1 shows the percentage breakdown by IXC.

Clearly, this new data justifies the level of dial-around compensation that was set in the FCC's Payphone Order. It also substantiates the move to per-call compensation, and verifies a few other trends we had suspected but had not been able to quantify. The APCC will continue to gather this information for use in its legal, legislative and regulatory efforts. If you'd like to participate or if you'd like more information about the project, please call me at (703) 385-5300, ext. 225. ■

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